



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 8**  
**999 18<sup>TH</sup> STREET - SUITE 300**  
**DENVER, CO 80202-2466**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

MAR 21 2006

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ref: 8ENF-L

Chemical Specialties, Inc.  
Keith O. Brown, President and Registered Agent  
4800 Washington Street, Suite E  
Denver, Colorado 80216

Re: Grand Junction Anti-Freeze Site, SSID 08-FH  
Administrative Order on Consent:  
Notice of Final Order and Effective Date

Dear Mr. Brown,

This letter notifies you that the proposed administrative settlement between the U.S. Environmental Protection Agency (EPA) and Chemical Specialties Incorporated (CSI) concerning the Grand Junction Anti-Freeze Site, in Grand Junction, Colorado (Site), is now final and effective. In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. § 9622(i), EPA published in the Federal Register on February 16, 2006 (71 Fed. Reg. 8303), notice of a proposed Administrative Order on Consent (AOC) with CSI for the Site. The notice provided for a 30-day period and opportunity for persons who are not parties to the proposed settlement to file written comments relating to the proposed settlement. The public comment period is now closed and EPA did not receive any comments on the proposed settlement. Thus, there are no facts or considerations that indicate that the settlement (AOC) is inappropriate, improper or inadequate.

In accordance with Section 122(i) of CERCLA and Sections XVII and XVIII of the AOC, the proposed settlement became final and effective on the date of issuance of this notice. This date shall be deemed the Effective Date of the AOC. In accordance with Section V (Payment of Response Costs) of the AOC, the first of two installment payments by CSI is due not more than thirty (30) days after the Effective Date.



Printed on Recycled Paper

If you have any questions regarding this letter, or any other issue concerning the Site, please contact Jim Stearns, EPA Legal Enforcement Program, at (303) 312-6912.

Sincerely,

*Elisabeth Evans*

for Sharon Kercher, Director  
Technical Enforcement Program

enclosure: AOC

cc: J. Mike DiGiglia, Counsel for CSI  
Jim Stearns, 8ENF-L  
Mike Rudy, 8ENF-RC

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U.S. EPA Region 8  
CERCLA Docket No. CERCLA-08-2006-0002

**PROCEEDING UNDER SECTION  
122(h)(1) OF CERCLA  
42 U.S.C. § 9622(h)(1)**

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Appendix 1: Site Map

## **I. JURISDICTION**

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and subsequently redelegated to the undersigned EPA officials by EPA Region 8 Delegation No. 14-14-D.

2. This Agreement is made and entered into by EPA and Chemical Specialties Incorporated ("Chemical Specialties") (collectively, the "Parties"). Chemical Specialties consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms. By entering into this Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Chemical Specialties to make a cash payment to address its alleged civil liability for the Site, as provided in Section VII, herein, Covenant Not To Sue By EPA, subject to the Reservations of Rights by EPA in Section VIII.

## **II. BACKGROUND**

3. This Agreement concerns the Grand Junction Anti-Freeze Site ("Site") located in Grand Junction, Colorado. The Site includes the Chemical Specialties place of business at 714 South 5<sup>th</sup> Street, Grand Junction, Colorado, storm sewer, an open ditch into which the storm sewer drained, a storm drain under a railroad bridge ½ mile north of the Settling Party's place of business, an abandoned channel and areas of or in proximity to the Colorado River where these conveyances lead. A map generally depicting the Site location is attached hereto as Appendix 1. EPA alleges that the Site, including individually and collectively, the Settling Party's place of business, and the various drains, pipes, sewers, ditches and channels associated with the Site, is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the alleged release or alleged threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. On or about June 23-24, 2002, approximately 1,200 fish were found dead in and surrounding an abandoned channel associated with the Colorado River by the Colorado Division of Wildlife. On or about June 25, 2002, EPA and EPA contractors responded after a request for assistance from both the City of Grand Junction, Colorado and the Colorado Division of Wildlife to respond to the alleged contamination release and the dead fish. EPA secured the Site, built berms and trenches to control the extent of the contamination, constructed a by-pass to avoid the contaminated channel, and removed approximately 350 tons of sludgy material from the Site area.

5. In performing such response actions, EPA incurred response costs at or in connection with the Site. Specifically, EPA has incurred response costs, starting on January 1, 2002 and

extending through October 11, 2005, totaling approximately \$278,674.36, and additional response costs from October 12, 2005, through the effective date of this Order.

6. EPA alleges that Chemical Specialties is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site.

7. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.

8. EPA has reviewed the Financial Information submitted by Chemical Specialties to determine whether Chemical Specialties is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, and its review completed July 13, 2005, EPA has determined that Chemical Specialties has limited financial ability to pay for response costs incurred and to be incurred at and in connection with the Site.

9. EPA and Chemical Specialties recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Chemical Specialties in accordance with this Agreement do not constitute an admission of any liability. Chemical Specialties does not admit the validity of the facts or allegations contained in this Section and retains the right to controvert such facts and allegations in any subsequent proceedings, other than proceedings to implement or enforce this Agreement.

### **III. PARTIES BOUND**

10. This Agreement shall be binding upon EPA and upon Chemical Specialties and its successors and assigns. Any change in ownership or corporate or other legal status of Chemical Specialties, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Chemical Specialties' duties and responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

11. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement and the attached appendix(es). In the event of conflict between this Agreement and any appendix, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Financial Information" shall mean those documents submitted prior to June 13, 2005, to EPA by Settling Party, providing evidence of its financial status and ability-to-pay.

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Chemical Specialties Incorporated.

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site to the present, through the effective date of this Agreement, plus accrued Interest on all such costs through such date.

j. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

k. "Settling Party" shall mean Chemical Specialties Incorporated, its successors and assigns.

l. "Site" shall mean the Grand Junction Anti-Freeze Superfund site, including the Settling Party's place of business at 714 South 5<sup>th</sup> Street, Grand Junction, Colorado, associated storm sewer, an open ditch into which the storm sewer drained, a storm drain under a railroad bridge ½ mile north of the

Settling Party's place of business, an abandoned channel, and areas of or in proximity to the Colorado River where these conveyances lead, as generally shown on the map attached hereto as Appendix 1.

m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

## **V. PAYMENT OF RESPONSE COSTS**

12.a. Settling Party shall pay to the EPA Hazardous Substance Superfund the principal sum of \$22,000.00, plus an additional sum for Interest as provided below. Payment shall be made in two (2) installments. The first payment of \$11,000.00 shall be due not more than thirty (30) days after the Effective Date of this Agreement. The second (final) installment shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the Effective Date of this Agreement as defined in Paragraph 42. The second (final) payment of \$11,000.00, plus Interest, shall be due on January 31, 2007. Settling Party may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

b. Payment by Settling Party shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check, or a letter accompanying each check, shall identify the name and address of the party(ies) making payment, the Site name, the EPA Region (Region 8) and Site/Spill ID Number (Site ID # 08-FH), and the EPA docket number for this action. Settling Party shall send the check(s) to:

for Regular Mail:

EPA Superfund  
Mellon Bank  
Attn: Superfund Accounting  
Lockbox 360859  
Pittsburgh, PA 15251-6859

for Federal Express, Airborne, Etc.:

EPA Superfund  
U.S. EPA, 360859  
Mellon Client Service Center Rm 670  
500 Ross Street  
Pittsburgh, PA 15262-0001

for Wire Transfers:

Wire transfers shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (Grand Junction Anti-Freeze), EPA Region 8 and Site/Spill ID Number 08-FH, and the EPA docket number for this action. Wire transfers must be



sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004  
TREAS NYC/CTR/  
BNF=/AC-68011008

c. At the time of payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall reference the EPA Region (Region 8) and the Site/Spill ID Number (Site ID # 08-FH), and the EPA docket number for this action.

13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited in the EPA Hazardous Substance Superfund.

## **VI. FAILURE TO COMPLY WITH AGREEMENT**

14. Interest on Late Payments. If Settling Party fails to make any payment required by Paragraph 12 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

### **15. Stipulated Penalties.**

a. If any amounts due to EPA under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 12, \$500.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region (Region 8) and Site Spill ID Number (Site ID # 08-FH), and the EPA Docket Number for this action. Settling Party shall send the check (and any accompanying letter) to the EPA Superfund, at the lockbox and mailing address, or wire transfer information, as provided in Paragraph 12.

c. At the time of each payment, Settling Party shall also send notice that payment has been made to EPA in accordance with Section XV (Notices and Submissions). Such notice shall identify the EPA Region (Region 8) and Site Spill ID Number, Site ID # 08-FH, and the EPA Docket Number for this action.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Party's failure to comply with the requirements of this Agreement, if Settling Party fails or refuses to comply with the requirements of this Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse Settling Party from payment as required by Section V or from performance of any other requirements of this Agreement.

#### **VII. COVENANT NOT TO SUE BY EPA**

18. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of the first payment required by Section V, Paragraph 12 (Payment of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Agreement, including but not limited to, payment of all amounts due under Section V (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Agreement). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate or incomplete, Settling Party shall forfeit all payments made pursuant to this Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate or incomplete information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

#### **VIII. RESERVATIONS OF RIGHTS BY EPA**

19. EPA reserves, and this Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Agreement;
- b. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- c. criminal liability;
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance or pollutant or contaminant outside of the Site; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

20. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to re-institute or reopen this action, or to commence a new action seeking relief other than as provided in this Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 38, is false or, in an material respect, inaccurate or incomplete.

21. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

#### **IX. COVENANT NOT TO SUE BY SETTLING PARTY**

22. Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Colorado, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

23. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Party agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Party with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

25. The waiver in Paragraph 24 shall not apply with respect to any defense, claim, or cause of action that Settling Party may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Settling Party. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

26. Except as provided in Paragraphs 24 and 25, nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. Except as provided in Paragraphs 24 and 25 (Non-Exempt De Micromis Waiver), the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

27. EPA and Settling Party agree that the actions undertaken by Settling Party in accordance with this Agreement do not constitute an admission of any liability by Settling Party.

Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

28. The Parties agree that Settling Party is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past Response Costs.

29. Settling Party agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Party shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

30. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

## **XI. SITE ACCESS**

31. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by Settling Party, Settling Party shall, commencing on the Effective Date of this Agreement, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

1. Monitoring, investigation, removal, remedial or other activities at the Site;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;

4. Obtaining samples;
5. Assessing the need for, planning, or implementing response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Party or its agents, consistent with Section XII (Access to Information); and
7. Assessing Settling Party's compliance with this Agreement.

32. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

## **XII. ACCESS TO INFORMATION**

33. Settling Party shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

### **34. Confidential Business Information and Privileged Documents.**

a. Settling Party may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Party that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Party.

b. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege in lieu of providing records, they shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be

privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

35. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

### **XIII. RETENTION OF RECORDS**

36. Until ten (10) years after the effective date of this Agreement, Settling Party shall preserve and retain all records, reports, or information now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

37. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Party shall notify EPA at least 90 days prior to the destruction of any such records and, upon request by EPA, Settling Party shall deliver any such records to EPA. Settling Party may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Party asserts such a privilege, it shall provide EPA with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to EPA in redacted form to mask the privileged information only. Settling Party shall retain all records that it claims to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Party's favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

### **XIV. CERTIFICATION**

38. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the state or the filing of a suit against it regarding the Site and that it has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42

U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Party executes this Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

## **XV. NOTICES AND SUBMISSIONS**

39. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Party.

### **As to EPA:**

Mike Rudy (8ENF-RC)  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202

### **As to Settling Party:**

Chemical Specialties Inc.  
Keith O. Brown, President and Registered Agent  
4800 Washington Street, Suite E  
Denver, Colorado 80216

## **XVI. INTEGRATION/APPENDICES**

40. This Agreement and its appendices constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement. The following appendix is attached to and hereby incorporated into this Agreement: "Appendix 1", the map generally depicting the Site.



## **XVII. PUBLIC COMMENT**

41. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

## **XVIII. EFFECTIVE DATE**

42. The Effective Date of this Agreement shall be the date upon which EPA issues written notice to Settling Party that the public comment period pursuant to Paragraph 41 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

For the U.S. Environmental Protection Agency

Date: 1/18/06

By: Michael T. Risner  
Michael T. Risner  
Director  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

Date: Jan. 20, 2006

By: Sharon L. Kercher  
Sharon Kercher  
Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

THE UNDERSIGNED SETTLING PARTY enters into this Agreement in the matter of EPA Docket No. CERCLA \_\_\_\_\_, relating to the Grand Junction Anti-Freeze Site, Grand Junction, Colorado:

For Settling Party:

Chemical Specialties Incorporated  
714 South 5<sup>th</sup> Street  
Grand Junction, Colorado

By: Kurt A. Bruce 1-13-06  
[Name] [Date]